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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant:	Rodney G. Johnson	Examiner:	Mark Beauchaine
Serial No.	10/663,436	Group Art Unit:	3653
Filed:	September 15, 2003	Docket No.	PA0891.ap.US
Title:	SHUFFLING APPARATUS AND METHOD		

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25 July 2008

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**MAIL STOP APPEAL BRIEF - PATENTS**

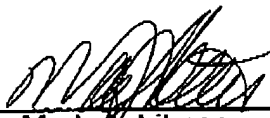
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

The following documents are hereby submitted:

- ☒ Reply Brief On Appeal (5 pages)
- ☒ Transmittal Sheet
- ☒ Facsimile Cover Sheet

The fee for the Appeal Brief was paid for when the original Appeal Brief, dated 25 June 2007, was submitted to the USPTO. Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.

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By:   
Atty: Mark A. Litman  
Reg. No. 26,390

The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being SENT BY facsimile to the United States Patent and Trademark Office, addressed to: Mail Stop: **APPEAL BRIEF-PATENTS**, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on **25 July 2008**

Mark A. Litman  
Name

  
Signature

JUL 25 2008

S/N 10/663,436PATENT

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**MAIL STOP: APPEAL BRIEF - PATENTS**

P.O. BOX 1450

Commissioner for Patents

Alexandria, VA 22313-1450

**REPLY BRIEF ON APPEAL**

Dear Sir:

The present Reply Brief on Appeal is being submitted in response to new issues raised in the Examiner's Answer mailed **June 2, 2008**. The U.S. Patent and Trademark Office is hereby authorized to debit any costs and fees associated with this Petition to Deposit Account No. 50-1391. Appellant is submitting this single copy of the Appeal Brief in Compliance with the requirements of 37 CFR 41.37(c). **Appellant requests a personal appearance at the Board of Appeals, and now authorizes payment of the fee, having received the Examiner's Amendment.**

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being sent by facsimile transmission to the United States Patent Office addressed to: MAIL STOP: APPEAL BRIEF - PATENTS, P.O. BOX 1450. Commissioner for Patents, Alexandria, VA 22313-1450. ~~2 AUGUST 2008~~ 25 July 2008

Mark A. Litman  
Name

  
Signature

### **NEW ISSUES RAISED IN THE OFFICE ACTION**

The Examiner's Answer characterizes individual references and their disclosure in erroneous ways to attempt to plug gaps in the teachings of the collective references.

In particular, Grauzer is characterized as teaching "...a card shuffler having card sensor 176 located between card holding area 60 and card collection area 36 for the purpose of identifying cards being processed by the shuffler."

The misrepresentation is the level of content implied in the term "identifying cards." The card sensor 176 of Grauzer has no function of reading data content (e.g., rank or suit) from the cards, but is only a position sensor. Grauzer does not even address the issue of reading rank and suit.

Additionally, the card sensing is done to assure proper mechanical function, card delivery, within the shuffler. As such, the card sensors must be inside the shuffler. The following disclosure (with **emphasis** added) is material to an appreciation of the excessive import applied to the teachings of Grauzer in the rejection:

**Disclosure in Grauzer of Display function** - An advantage of the present invention is that it provides a programmable card handling machine with a display and appropriate inputs for adjusting the machine to any of a number of games wherein the inputs include a number of cards per hand selector, a number of hands delivered selector and a trouble-shooting input. Additionally, there may be an elevator speed adjustment and **sensor to accommodate or monitor the position of the elevator as cards wear or become bowed or warped**. These features also provide for interchangeability of the apparatus, meaning the same apparatus can be used for many different games and in different locations thereby reducing the number of back up machines or units required at a casino. The display may include a game mode or game selected display, and use a cycle rate and/or hand count monitor and display for determining or monitoring the usage of the machine.

In the preferred embodiment, the pick-up roller 150 is not continuously driven, but rather indexes and includes a one-way clutch mechanism. After initially picking up a card and advancing it into the pinch roller system 160, the motor 154 operably coupled to the pick-up roller 150 stops driving the roller, and the roller 150 free-wheels as the card is accelerated through the pinch roller system 160. The speed-up pinch roller system 160 is preferably continuous in operation once a hand-forming cycle starts and, **when a card is**

**sensed by the adjacent card out sensor 176, the pick-up roller 150 stops and free-wheels while the card is accelerated through the pinch roller system 160. When the trailing edge of the card is sensed by the card out sensor 176,** the rack assembly 28 moves to the next position for the next card and the pick-up roller 150 is re-activated.

As can be seen from this quoted text of Grauzer, the card sensor merely identifies the presence of a physical object, it does not identify (read) the card.

On Page 17 of the Brief on Appeal, Applicants noted that:

**“Macheel cannot have a card identification flaw except by improper software** in the device (there are no physical cards). It is impossible for Macheel to be the basis for a teaching that would overcome the deficiencies of the Roblejo in view of Grauzer combination. The rejection is in error and must be withdrawn.”

The present rejection in the Examiner's answer asserts that “Macheel teaches a card **shuffler** having illuminated displays 18 and 20 that display the suit and rank of a card for the purpose of notifying an operator of the identity of a particular card being processed by the shuffler.” Macheel is not a “card shuffler,” but only an electronic card game. No cards are “processed by the shuffler” in Macheel as there are only virtual cards created by the electronic gaming system. Macheel should be considered as non-analogous art, as it is immaterial to the shuffling of physical playing cards (which is required in the physical movement of cards recited in the claims). There is no card reading, no processing of card rank signals, and no display of read card rank information.

The Examiner's answer fails to note that no reference, and in particular the Roblejo reference, which is the only reference reading rank of playing cards, does not read rank and suit of playing cards “...**between the card holding area and the card collecting area...**” Roblejo has a card reading sensor 14 at the most distal end of the support area for the stack of cards 12. This can only read stationary cards at the bottom of the stack and is not **between** the card holding area and the card collecting area. It is at the end point of the card holding area. This is important, because card feed deficiencies (e.g., initially moving multiple cards when movement of a single card is intended) will occur most frequently at the initial pick-off of the input cards. Once cards are in transit,

“...between the card holding area and the card collecting area...,” they are less likely to have remained together and are less likely to be joined together as the cards are moving independently through the system. **The rejection fails to consider the location and function of the sensor “...between the card holding area and the card collecting area...” and that limitation additionally cannot be obvious from the teachings of the combination of references.** Neither Grauzer nor Macheel reads card information from physical playing cards, and Roblejo is enabled and instructive for only a single card-reading sensor location in a card infed tray, where errors can occur if more than one cards is pulled out of the tray at a time.

For these reasons and all of the reasons originally provided in the Brief on Appeal, the present rejection must be reversed and all claims allowed.

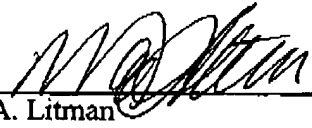
**CONCLUSION**

All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

Respectfully submitted,  
RODNEY JOHNSON  
By his Representatives,  
MARK A. LITMAN & ASSOCIATES, P.A.  
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3209 West 76<sup>th</sup> Street  
Edina, MN 55435  
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Date 25 July 2008 By

  
\_\_\_\_\_  
Mark A. Litman  
Reg. No. 26,390

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Name: Mark A. Litman

  
\_\_\_\_\_  
Signature